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Investigation  
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July 20, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less than Fair Value Investigation of Certain  
Cold-Rolled Steel Flat Products from the United Kingdom

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## I. SUMMARY

The Department of Commerce (the Department) determines that certain cold-rolled steel flat products (cold-rolled steel) from the United Kingdom is being, or is likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015.

We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification, we made certain changes to the margin calculations for the mandatory respondents, Caparo Precision Strip, Ltd. (Caparo) and Tata Steel UK Ltd. (TSUK) (collectively, respondents). The estimated weighted-average dumping margins are shown in the "Final Determination" section of the accompanying *Federal Register* notice. We recommend that you approve the positions in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from parties.

- Comment 1: Level of Trade (TSUK)
- Comment 2: Home-Market Freight Revenue (TSUK)
- Comment 3: CEP Credit Expense (TSUK)
- Comment 4: Home Market Credit Expense (Caparo)
- Comment 5: Quality Codes (Caparo)
- Comment 6: Date of Sale (Caparo)
- Comment 7: Successor-in-Interest (Caparo)



- Comment 8: Restructuring and Impairment Costs (TSUK)  
Comment 9: Raw Materials Costs (TSUK)  
Comment 10: Energy Costs (TSUK)  
Comment 11: Verification Corrections (TSUK)  
Comment 12: Verification Corrections (Caparo)

## II. BACKGROUND

On March 7, 2016, the Department published its preliminary determination of sales at LTFV in the antidumping duty investigation of certain cold-rolled steel flat products from the United Kingdom.<sup>1</sup> The Department conducted sales and cost verifications of Caparo and TSUK.<sup>2</sup> On April 6, 2014, AK Steel (one of the petitioners),<sup>3</sup> requested that the Department conduct a hearing, which the Department conducted on June 21, 2016.<sup>4</sup>

We invited parties to comment on the *Preliminary Determination*. We received case and rebuttal briefs from the petitioners, Caparo, and TSUK in June 2016. Based on our analysis of the comments received, as well as our findings at verification and pre-verification corrections, the weighted-average dumping margins determined in this final determination differ from those in the *Preliminary Determination*.

For a summary of the product coverage comments and rebuttal responses submitted to the record of all cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.<sup>5</sup>

We have conducted this investigation in accordance with section 735 of the Act.

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<sup>1</sup> *See Certain Cold-Rolled Steel Flat Products From the United Kingdom: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 11744 (March 7, 2016) (*Preliminary Determination*).

<sup>2</sup> *See* Memorandum to the File entitled “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Caparo Precision Strip, Ltd.,” dated April 1, 2016, Memorandum to the File entitled “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Tata Steel UK Ltd.,” dated April 4, 2016, Memorandum to the File entitled “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Constructed-Export-Price Sales Verification of Tata Steel UK Ltd.,” dated May 4, 2016, Memorandum to the File entitled “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Constructed-Export-Price Sales Verification of Caparo Precision Strip, Ltd.,” dated May 5, 2016, Memorandum to the File entitled “Verification of the Cost Response of Caparo Precision Strip, Ltd., in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom,” dated May 31, 2016, and Memorandum to the File entitled “Verification of the Cost Response of Tata Steel UK Ltd. in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom,” dated May 31, 2016.

<sup>3</sup> AK Steel Corporation (AK Steel), ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

<sup>4</sup> *See* Hearing Transcript dated June 27, 2016.

<sup>5</sup> *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Cold-Rolled Steel Products from Brazil, the People’s Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: “Final Scope Comments Decision Memorandum” dated May 16, 2016 (Final Scope Decision Memorandum).

### III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is cold-rolled steel from the United Kingdom. For a complete description of the scope of this investigation, see the “Scope of the Investigation,” in Appendix I of *Federal Register* notice.

### IV. MARGIN CALCULATIONS

For Caparo, the Department calculated constructed export price (CEP) and normal value (NV) using the same methodology stated in the *Preliminary Determination*.<sup>6</sup> Further, we made the following changes to our calculations based on findings at verification and our analysis of case and rebuttal briefs:<sup>7</sup>

1. We incorporated the pre-verification corrections from the home-market sales, CEP sales, and cost verifications.
2. We recalculated Caparo’s home-market credit expenses using the one-month GBP LIBOR rates in effect during the POI.
3. We used the date of shipment as the date of sale for CEP sales shipped directly to the customer.

For TSUK, the Department calculated export price (EP), CEP, and NV using the same methodology stated in the *Preliminary Determination*.<sup>8</sup> Further, we made the following changes to our calculations based on findings at verification and our analysis of case and rebuttal briefs:<sup>9</sup>

1. We used the revised U.S. sales database TSUK submitted on March 25, 2016, which incorporated the pre-verification corrections from the home-market and EP sales verification.
2. We incorporated the pre-verification corrections from the CEP sales verification.
3. We used the revised cost database TSUK submitted on March 11, 2016, with its supplemental response of the same date.

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<sup>6</sup> See *Preliminary Determination*.

<sup>7</sup> See Memorandum to the File entitled “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Caparo Precision Strip, Ltd.,” dated April 1, 2016, Memorandum to the File entitled “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Constructed-Export-Price Sales Verification of Caparo Precision Strip, Ltd.,” dated May 5, 2016, Memorandum to the File entitled “Verification of the Cost Response of Caparo Precision Strip, Ltd., in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom,” dated May 31, 2016.

<sup>8</sup> See *Preliminary Determination*.

<sup>9</sup> See Memorandum to the File entitled “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Tata Steel UK Ltd.,” dated April 4, 2016, Memorandum to the File entitled “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Constructed-Export-Price Sales Verification of Tata Steel UK Ltd.,” dated May 4, 2016, Memorandum to the File entitled “Verification of the Cost Response of Tata Steel UK Ltd. in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom,” dated May 31, 2016.

4. We used the reported home-market freight revenue as an offset of all freight charges incurred on the sales.
5. We granted a level-of-trade adjustment.
6. We recalculated imputed credit expenses for CEP sales to use the date of shipment instead of the date of invoice. We also set the ocean transport period (DINVCAR2U) to zero for CEP sales in order to avoid double counting.
7. We revised the billing adjustments for two EP sales to match the amounts we verified.
8. We adjusted TSUK's reported total cost of manufacture (TOTCOM) for raw material and energy (electricity and natural gas) inputs in accordance with the transactions disregarded rule at section 773(f)(2) of the Act. To calculate the market price of electricity, we applied partial adverse facts available (AFA) within the meaning of sections 776(a)(2)(A) and (C), 776(a)(1), and 776(b) of the Act.
9. We revised TSUK's reported general and administrative (G&A) expenses to include restructuring and impairment costs.

## V. COMPARISONS TO FAIR VALUE

In the *Preliminary Determination*, the Department applied a differential pricing analysis to determine whether application of the average-to-transaction method is appropriate to calculate Caparo's and TSUK's weighted-average dumping margin, pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act. For Caparo, we preliminarily applied the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin. For TSUK, we preliminarily applied the average-to-average method for all U.S. sales to calculate the weighted-average dumping margins. For this final determination, based on results of the differential pricing analysis, for Caparo, we are continuing to apply the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test, and for TSUK we are continuing to apply the average-to-average method to TSUK's U.S. sales.

For Caparo, based on the results of the differential pricing analysis, the Department finds that 35.38 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>10</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to

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<sup>10</sup> See Memorandum to the File from Thomas Schauer, "Less-Than-Fair-Value Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Determination Analysis Memorandum for of Caparo Precision Strip, Ltd.," dated July 20, 2016 (Caparo Final Analysis Memorandum) at margin program output.

those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this final determination, the Department is applying average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Caparo.

For TSUK, based on the results of the differential pricing analysis, the Department finds that 73.38 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>11</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this final determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for TSUK.

## VI. DISCUSSION OF ISSUES

### Comment 1: Level of Trade (TSUK)

AK Steel argues that all of TSUK's home-market sales should be found to be at a single level of trade (LOT). According to AK Steel, the differences in selling activities observed by the Department are insufficient to justify finding two different home market LOTs.

Citing 19 CFR 351.412(c)(2), AK Steel contends that the Department will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent) and that substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Citing *Silicomanganese from Venezuela*, AK Steel contends that different LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them and that separate channels of distribution alone do not qualify as separate LOTs particularly when the selling functions performed for each channel are similar.<sup>12</sup>

According to AK Steel, the differences in selling activities between TSUK's two home-market channels of distribution are insubstantial. AK Steel asserts that TSUK performs six of the twelve selling activities at the identical degree of intensity for customers in both channels and that, for the six selling activities where there are purported differences, the differences are slight or non-existent. With respect to market research, engineering/Research and Development (R&D)/product development services, inventory maintenance, and warehousing expenses, AK Steel contends that, although these functions were only performed at one channel of distribution,

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<sup>11</sup> See Memorandum to the File from Thomas Schauer, "Less-Than-Fair-Value Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Determination Analysis Memorandum for Tata Steel UK Ltd.," dated July 20, 2016 (TSUK Final Analysis Memorandum) at margin program output.

<sup>12</sup> See *Notice of Final Determination of Sales at Less Than Fair Value; Silicomanganese from Venezuela*, 67 FR 15533 (April 2, 2002) (*Silicomanganese from Venezuela*) and accompanying Issues and Decision Memorandum at Comment 8.

they were performed only at a low level for the other channel. Moreover, with respect to warehousing, AK Steel alleges that TSUK has acknowledged that it also performs a low level of warehousing for both channels. With respect to procurement services, AK Steel asserts that this activity is performed primarily for non-subject merchandise, which means there is little difference between the distribution channels for sales of subject merchandise. Finally, AK Steel contends that the difference in the level of activity of rebates between the two channels by TSUK is contradicted by TSUK's sales database.

AK Steel also argues that, even if the differences in selling activities were substantial, TSUK has not demonstrated that the sales in TSUK's two home-market channels of distribution are made at different marketing stages. AK Steel contends that it is relevant that the slight differences in selling functions are inconsistent in terms of their direction; as the Department found, some activities are performed only within one home-market channel, whereas other activities are performed only within the other home-market channel. Citing the preamble to the Department's regulations, AK Steel asserts that, if the sales in one channel were truly made at a more remote marketing stage than the other, where TSUK is effectively taking "on a role comparable to that of a reseller," those sales should reflect consistently greater selling activities, but that is not the case here.<sup>13</sup>

Moreover, AK Steel contends, TSUK's two channels do not service purchasers at different stages in the chain of distribution and there is no relationship between the reported sales channels and the marketing stages at which TSUK's customers operate. AK Steel alleges that TSUK acknowledges that it sells to end users, distributors, and processors through both channels of distribution and that the selling activities it performs when selling to end users, distributors, and processors within each channel are functionally the same. Moreover, AK Steel claims that TSUK reported sales to certain consolidated customer codes in both channels of distribution.

In addition, AK Steel argues that, even if there are two home-market LOTs, no LOT adjustment should be made. According to AK Steel, under the Department's regulations, a LOT adjustment is appropriate only when the difference in the LOT has an effect on price comparability. In order to find such an effect, AK Steel avers, the Department must determine that there is a pattern of consistent price differences between the LOTs. According to AK Steel, there is no pattern of consistent price differences between TSUK's two home-market channels of distribution. Therefore, AK Steel concludes, no LOT adjustment should be made.

TSUK argues that the Department correctly found two LOTs in the home market. TSUK asserts that it sells in two different channels of distribution in the home market: (1) sales directly from TSUK's mills to customers and (2) sales through TSUK's distribution centers to customers. According to TSUK, these two channels of distribution correspond to two different LOTs in the home market, as justified by the fact that they are at different marketing stages with substantially different selling activities performed in each channel.

TSUK contends that AK Steel's arguments do not pass muster. According to TSUK, AK Steel argues only that the differences in market research, engineering/R&D/product development services, and inventory maintenance are slight. TSUK avers that AK Steel does not take into

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<sup>13</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27371 (May 19, 1997) (*Preamble*).

account that each of these selling activities is performed at one channel but not the other. With respect to warehousing, TSUK claims that the record shows that there is a difference in the level of activity between the two channels of distribution. TSUK further alleges that the Department's regulations state that some overlap in selling activities is permissible and will not preclude a determination that two sales are at different stages of marketing. TSUK also contends that AK Steel misconstrues what it has said and what the Department found at verification with respect to procurement services; according to TSUK, it offers procurement services with respect to both subject and non-subject merchandise. With respect to rebates, TSUK alleges that rebates were not one of the selling activities upon which the Department's *Preliminary Determination* was based.

TSUK argues that the Department has made clear in its Antidumping Manual and decisions that nominal differences in customer categories do not, in themselves, establish a difference in LOT. Citing *SS Bar from Brazil*, TSUK claims that the Department found two LOTs in a case where there was one home market channel servicing distributors and large end-users with mill-direct sales and a second home market channel servicing smaller end users through a distribution system consisting of two local warehouses despite the overlap in customer categories.<sup>14</sup> TSUK contends that, where there are significant differences in selling activities between the two channels of distribution, the fact that there are or are not nominal differences in customer categories between the two channels is inconsequential.

TSUK acknowledges AK Steel's observation that it reported sales to certain consolidated customer codes in both channels of distribution, but contends that this does not mean there can only be one LOT. According to TSUK, at the consolidated level, a customer may consist of customers in both channels of distribution. Moreover, TSUK asserts that it sells to the vast majority of its consolidated customers in only one channel of distribution.

TSUK further argues that the Department correctly made a LOT adjustment. According to TSUK, the percentage of all models sold for which the weighted-average price was greater at each LOT and the percentage of total quantity of sales of all models for which the weighted-average price was greater at each LOT have not changed materially since the *Preliminary Determination*. Because of this, TSUK argues, the Department should continue to conclude that there exists a pattern of consistent price differences between the two LOTs in the home market and make a LOT adjustment.

Department's Position: Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will determine NV based on sales at the same LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>15</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>16</sup> Some overlap in selling

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<sup>14</sup> See *Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 75789 (December 19, 2014) (*SS Bar from Brazil*) and accompanying Preliminary Decision Memorandum at 8.

<sup>15</sup> See 19 CFR 351.412(c)(2).

<sup>16</sup> *Id.*; see also *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 7 (*Orange Juice from Brazil*).

activities will not preclude a determination that two sales are at different stages of marketing.<sup>17</sup> Finally, the Department “will determine that a difference in LOT has an effect on price comparability only if it is established to the satisfaction of the Secretary that there is a pattern of consistent price differences between sales in the market in which normal value is determined: (i) at the LOT of the export price or constructed export price (whichever is appropriate); and (ii) at the LOT at which normal value is determined.”<sup>18</sup>

In this case, TSUK reported that it sold cold-rolled steel in the comparison market through two channels of distribution: 1) sales from TSUK directly to distributors or end-users/processors (Channel 1), and 2) sales from TSUK through wholly-incorporated TSUK distribution centers to distributors or end-users/processors (Channel 2).<sup>19</sup> In the *Preliminary Determination*, we found that these two channels of distribution constituted two LOTs.<sup>20</sup>

We continue to find that TSUK’s home-market channels of distribution constitute two different LOTs. It is our view that direct sales from the mill and sales through a distribution center represent two different stages in the marketing process. We have made similar determinations in other cases with similar fact patterns.<sup>21</sup>

In this case, we do not agree with AK Steel that the differences in selling functions are slight. With respect to market research, TSUK reported that it “periodically conducts market research for its internal use” which “includes both broad studies of developments in TSUK’s markets, as well as studies of particular market opportunities, such as new products and geographical markets,” but that “distribution centers do not conduct market research in this manner.”<sup>22</sup> Thus, although TSUK reported the level of activity at Channel 1 to be “low,”<sup>23</sup> the fact remains that this selling function is performed at one channel but is not performed at all at the other channel. We determine that this difference is more than slight with respect to this selling function.

With respect to engineering/R&D/product development services, for home-market Channel 1 sales, TSUK sends engineers to customers to help them develop uses for TSUK products and also to resolve any complaints, whereas this does not happen for home-market channel 2 sales.<sup>24</sup> Thus, although TSUK reported the level of activity at Channel 1 to be “low,”<sup>25</sup> the fact remains that this selling function is performed at one channel but is not performed at all at the other channel. We determine that this difference is more than slight with respect to this selling function.

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<sup>17</sup> See 19 CFR 351.412(c)(2).

<sup>18</sup> See 19 CFR 351.412(d).

<sup>19</sup> See letter from TSUK, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: TSUK’s Section A Questionnaire Response” (October 16, 2015) (TAQR) at 14.

<sup>20</sup> See Memorandum to file, “Less-Than-Fair-Value Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: Preliminary Determination Analysis Memorandum for Tata Steel UK Ltd.” (February 29, 2016) at 2-3.

<sup>21</sup> See, e.g., *SS Bar from Brazil*, 79 FR 75789, and accompanying Preliminary Decision Memorandum at 8 (unchanged in final; 80 FR 12805 (March 11, 2015)).

<sup>22</sup> See TAQR at 16.

<sup>23</sup> *Id.*, at Exhibit A-8.

<sup>24</sup> See memorandum to file, “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Tata Steel UK Ltd.” (April 4, 2016) (TSUK HM Sales Verification Report) at 4.

<sup>25</sup> See TAQR at Exhibit A-8.

With respect to inventory maintenance, for Channel 1 sales, TSUK produces its merchandise to order, does not sell from inventory, and does not maintain inventory stocks but, for Channel 2 sales, it does maintain a certain level of inventory consistent with its business activities and customer demands in those centers.<sup>26</sup> Thus, although TSUK reported the level of activity at Channel 2 to be “low,”<sup>27</sup> the fact remains that this selling function is performed at one channel but is not performed at all at the other channel. We determine that this difference is more than slight with respect to this selling function.

With respect to procurement services, for Channel 1 sales, TSUK does not engage in this selling activity but, for Channel 2 sales, it does engage in this selling activity, primarily with regard to non-subject merchandise.<sup>28</sup> TSUK explained at verification that, for home-market Channel 2 sales, it will offer to procure non-subject merchandise or merchandise it does not produce (*e.g.*, aluminized products) for customers who want such products in addition to the subject merchandise.<sup>29</sup> Thus, contrary to AK Steel’s claim that this only happens with respect to non-subject merchandise, this selling activity can occur either with respect to subject merchandise or in conjunction with sales of subject merchandise. Accordingly, this selling function is performed at one channel but is not performed at all at the other channel. We determine that this difference is more than slight with respect to this selling function.

With respect to warehousing, for Channel 2 sales, because the warehouses are located away from the manufacturing locations, TSUK does incur a warehousing charge.<sup>30</sup> For Channel 1 sales, TSUK does sometimes incur warehouse expenses.<sup>31</sup> Although we cited differences in warehousing as forming part of the basis for our preliminary finding that there were two LOTs, we have reconsidered that determination with respect to warehousing. TSUK reported warehousing expenses for its home-market sales for both Channel 1 and Channel 2 sales.<sup>32</sup> Because we are adjusting for warehousing expenses directly in our calculation of NV, we are not considering differences in warehousing for purposes for this final determination. For the same reason, we did not, and continue to not consider, the levels of activity TSUK reported with respect to rebates, freight and delivery, or warranty services in making our LOT determination.

Accordingly, we determine that there are significant differences between Channel 1 sales and Channel 2 sales with respect to market research, inventory maintenance, procurement services, and engineering/R&D/product development services. The regulations state that there must be differences in selling functions, not that the differences must be all larger or smaller in one channel. The regulations also permit some overlap in selling functions. Accordingly, because we determine that Channel 1 sales and Channel 2 sales represent two different stages in the

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<sup>26</sup> See TAQR at 17-18.

<sup>27</sup> *Id.*, at Exhibit A-8.

<sup>28</sup> *Id.*, at 20.

<sup>29</sup> See TSUK HM Sales Verification Report at 4.

<sup>30</sup> See TAQR at 16.

<sup>31</sup> See letter from TSUK, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: TSUK’s Sections A through C Supplemental Questionnaire Response,” (December 14, 2015) at 18.

<sup>32</sup> See letter from TSUK, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: TSUK’s Sections B through D Questionnaire Response” (November 9, 2015) (TB-DQR) at B-33.

marketing process and that there are significant differences in the selling functions involved with these two channels of distribution, we continue to determine that TSUK's two home market channels of distribution constitute two different LOTs.

AK Steel asserts that, even if the Department finds that there are two LOTs in the home market, there is not a pattern of consistent price differences between the two home-market LOTs and, thus, a LOT adjustment is not warranted. In the *Preliminary Determination*, our calculations indicated no pattern of differences that had an effect on price comparability and, consequently, we did not make a LOT adjustment; however, our narrative erroneously stated that we had found such a pattern.<sup>33</sup> In this final determination, however, we find a consistent pattern of differences that had an effect on price comparability. Because our analysis with respect to this fact pattern is proprietary, please see the TSUK Final Analysis Memorandum for more detail.<sup>34</sup> Thus, because we find that there is a pattern of consistent price differences between the two home-market LOTs, we have made a LOT adjustment.

#### Comment 2: Home-Market Freight Revenue (TSUK)

AK Steel argues that the cap on TSUK's home-market freight revenue should be removed or, at the very least, increased. AK Steel contends that it is appropriate to add the full amount of freight revenue to home market prices without caps because, whereas TSUK reported freight revenues on a transaction-specific basis, it reported freight expenses for many sales on an average basis. AK Steel asserts that it is distortive to cap revenues by expenses reported on a different basis. AK Steel provides a hypothetical example where total freight revenue and total freight expenses were equal for every sale (but different from sale to sale) to demonstrate that capping freight revenues reported on a transaction-specific basis at the amount of freight expenses reported on an average basis can cause a situation where all freight expenses are deducted, but only a portion of freight revenue will be added. AK Steel asserts that, in this case, all freight revenue should be added without being subject to a cap because TSUK cannot show that the transaction-specific freight revenue exceeded the transaction-specific freight expense.

AK Steel further argues that, at a minimum, home-market freight revenue should be capped at the sum of all home-market movement expenses. According to AK Steel, although TSUK reported expenses associated with inland freight from the factory to warehouse, warehousing, inland freight from the warehouse to customer, and inland insurance, the Department capped freight revenues at the amount of inland freight from the warehouse to customer only. AK Steel asserts that TSUK acknowledged at verification that freight revenue covered all delivery charges, including inland freight to warehouse, warehousing expense, and inland freight to the customer. AK Steel contends that freight revenue should be capped at the sum of all home-market movement expenses for the final determination.

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<sup>33</sup> We did not make a LOT adjustment in the preliminary margin calculation for TSUK. See memorandum to file, "Less Than Fair Value Investigation of Certain Cold Rolled Steel Flat Products from the United Kingdom: Preliminary Determination Analysis Memorandum for Tata Steel UK Ltd.," (February 29, 2016) and the attached margin calculation program at Section 1 F.

<sup>34</sup> See TSUK Final Analysis Memorandum.

TSUK argues that the Department correctly capped home-market freight revenue. TSUK asserts that most of its freight expenses were reported on a transaction-specific basis. According to TSUK, it calculated an average freight expense for sales by both Colors Shotton and Colorsteels,<sup>35</sup> but these sales are a relatively small proportion of total home-market sales and – because the merchandise these two entities produce is painted – does not match to U.S. sales. With respect to sales from distribution centers, TSUK contends that the reported freight was not based on gross overall averages but on a profit-center specific basis. TSUK alleges that these profit centers are located throughout the United Kingdom and are used to ship merchandise to customers within a relatively close proximity and, thus, reflect freight costs to ship merchandise within a given geographic area.

TSUK argues that most of its warehousing expenses were reported on a transaction-specific basis. TSUK further argues that, because insurance charges were calculated based on value - the same basis upon which they were incurred – they are reported on a transaction-specific basis.

TSUK also contends that AK Steel’s suggestion that it is appropriate to cap TSUK’s freight revenue at TSUK’s movement expenses is contrary to the Department’s practice of capping a respondent’s freight revenue by its freight expenses when they are linked directly to its freight revenue.

Department’s Position: With respect to freight-related revenues, our practice is to treat such revenues as an offset to the specific expenses for which they were intended to compensate.<sup>36</sup>

We continue to find that it is appropriate to cap TSUK’s freight revenues at the amount of freight expenses. Because of the proprietary nature of our analysis, see the TSUK Final Analysis Memorandum for our analysis.<sup>37</sup>

We agree with TSUK’s argument that the Department caps a respondent’s freight revenue by its freight expenses when they are associated directly to its freight revenue.<sup>38</sup> However, at verification, we found that TSUK’s reported freight revenues “covered all delivery charges, including inland freight to warehouse, warehousing expense, and inland freight to the customer.”<sup>39</sup> Because the freight revenues were associated directly with all delivery charges incurred on the sale, we have capped the freight revenues at the sum of all delivery charges incurred on the sale.

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<sup>35</sup> Colors Shotton and Colorsteels were TSUK-owned facilities where the foreign like product underwent further processing (e.g, painting, slitting). See letter from TSUK, “Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: TSUK’s Sections B through D Questionnaire Response,” (November 9, 2015) at B-5 through B-6.

<sup>36</sup> See *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>37</sup> See TSUK Final Analysis Memorandum.

<sup>38</sup> See *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016) and accompanying Issues and Decision Memorandum at Comment 3 (“record evidence supports the conclusion that Hyosung’s reported domestic inland freight expenses are associated directly with its reported inland freight revenue alone.”).

<sup>39</sup> See memorandum to file, “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Tata Steel UK Ltd.,” (April 4, 2016) at 10.

### Comment 3: CEP Credit Expense (TSUK)

AK Steel argues that TSUK's credit expenses should be recalculated for CEP sales. According to AK Steel, TSUK calculated credit based on the number of days from TSUK's U.S. affiliate's invoice to the customer until receipt of payment. Citing *Line Pipe from Korea*, AK Steel contends that the credit period should run "from the time the merchandise leaves the port in the foreign country to the date of payment."<sup>40</sup> Accordingly, AK Steel avers, the Department should recalculate credit expenses for CEP sales based on a credit period beginning with the date of shipment from the United Kingdom for the final determination.

TSUK argues that the Department should not recalculate credit expenses for CEP sales. TSUK claims that the Department was aware of the methodology used to compute credit expenses for CEP sales and used the reported credit expenses in the *Preliminary Determination* and should continue to use it for the final determination.

TSUK asserts that the invoice date, rather than date of shipment from the United Kingdom, is appropriately used to determine the credit period for computing credit expenses for CEP sales. According to TSUK, the invoice date reflects the point at which the terms of the sale to the final customer are established and the date when the goods are removed from the U.S. affiliate's inventory accounts. TSUK alleges that the Department observed instances where the terms of sale, including price, quantity and even the customer changed between the original order date and invoice date. Moreover, TSUK claims that it reported the ocean transport period (the number of days between the invoice date and the shipment date) as domestic inventory carrying costs. TSUK contends that, if the Department changes its methodology and recalculates credit expenses based on the period between shipment date and payment date, then the Department should set the domestic inventory carrying costs to zero to avoid double counting the period between shipment date and invoice date.

Department's Position: Our questionnaire instructed TSUK that credit expenses "should be calculated and reported on a transaction-by-transaction basis using the number of days between date of shipment to the customer and date of payment."<sup>41</sup> Moreover, the glossary of the questionnaire defines credit expense as "the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer."<sup>42</sup> This is also our normal practice with respect to CEP sales when the subject merchandise is shipped directly from the foreign country to the U.S. customer.<sup>43</sup> Thus, because TSUK's CEP sales were shipped directly from the United Kingdom to the unaffiliated customer, it is appropriate to base the credit expenses for these sales on the period between the date of shipment from the United Kingdom until payment by the customer and we have recalculated TSUK's credit expenses, accordingly.

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<sup>40</sup> See *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) and accompanying Issues and Decision Memorandum (*Line Pipe from Korea*) at Comment 19.

<sup>41</sup> See questionnaire to TSUK dated September 18, 2015 (TSUKQ), at C-27.

<sup>42</sup> *Id.*, at I-5.

<sup>43</sup> See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 69512 (November 16, 2005) and accompanying Issues and Decision Memorandum at Comment 2.

As TSUK observes, it reported imputed expenses associated with the period between the date of shipment and the date of invoice as domestic inventory carrying costs associated with ocean transport in the DINVCAR2U field. Therefore, we have set the DINVCAR2U field to zero for CEP sales in order to avoid double counting.

Comment 4: Home-Market Credit Expense (Caparo)

AK Steel argues that Caparo's home-market credit expenses should be disallowed. According to AK Steel, the Department found at verification that, in contrast to what it reported in its responses, Caparo had GBP borrowings. AK Steel contends that the questionnaire requires that credit expenses be calculated based on the actual cost of short-term debt incurred by a respondent in the foreign market. AK Steel asserts that, although the Department reviewed an agreement showing that Caparo had an available credit line, Caparo had no borrowings pursuant to that agreement.

AK Steel contends that the Department's regulations state that the interested party that is in possession of the relevant information has the burden of establishing its entitlement to a particular adjustment. AK Steel argues that Caparo, which is in possession of the necessary borrowing information but did not provide it, failed to satisfy its burden of establishing its entitlement to a credit adjustment. Therefore, the Department should set Caparo's home-market credit expenses to zero in the margin calculations.

Caparo argues that its reported home-market credit expenses should be allowed. Caparo alleges that the sales verification report does not say that Caparo had no borrowings pursuant to the agreement, which it submitted. Caparo asserts that the sales verification report indicates that Caparo did have GBP borrowings, confirms that the agreement had provisions for GBP borrowing rates had Caparo made any such borrowings, verifies the shipment and payment dates reported, and indicates successful recreation of the credit expenses reported. According to Caparo, the facts on the record indicate that the interest rate it reported is the correct interest rate for purposes of home-market credit expenses.

Caparo claims that the financing at issue is invoice discounting, which is a form of short-term borrowing used by companies to provide for working capital by drawing against its invoices prior to customer payment for product sales, such as sales out of inventory. According to Caparo, the agreement provides Caparo with three different types of interest rates, depending upon the nature of the relevant financing: (1) a property interest rate; (2) a plant and machinery interest rate; and (3) an inventory interest rate. The only interest rate from the agreement that would be applicable to the invoice discounting of Caparo's product sales is the inventory interest rate, which is what Caparo used. As such, Caparo concludes, the home-market credit expenses it reported are correct and represent Caparo's actual borrowings.

Department's Position: Caparo reported that it has a loan agreement that covers working capital, but that, "during the POI, short term borrowings against this facility have been in EURO and

there was no borrowing in GBP.”<sup>44</sup> Caparo used the rate from the agreement based on the monthly GBP LIBOR rate during the POI in order to calculate credit expenses.<sup>45</sup>

At verification, however, we found that “Caparo did have GBP borrowings in the form of discounted receivables, under a program called Invoice Discounting Facility (IDF). We attempted to ascertain the interest rate on these discounted receivables during the POI. We saw a page from the ... bank statement showing the total amount of the discount against the invoices charged, but it did not indicate how the discount was calculated, nor the interest rate used in calculating the discount.”<sup>46</sup>

Section 351.401(b)(1) of the Department’s regulations provides that “{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment.” Caparo has not met that burden with respect to its home-market credit expenses. Caparo was not able to demonstrate that its borrowings were at interest rates consistent with the agreement it provided.

That said, credit expenses are an imputed expense. We know that there is a financing cost to a respondent after it has shipped its merchandise to the customer, even in cases where the respondent had no borrowings in which the sale was incurred. In such cases, we use “publicly available information to establish a short-term interest rate applicable to the currency of the transaction ... with a preference for published average short-term lending rates.”<sup>47</sup> We determine that it is appropriate to do the same to restate Caparo’s home-market credit expenses. Accordingly, we have recalculated Caparo’s home-market credit expenses using the one-month GBP LIBOR rates in effect during the POI.<sup>48</sup>

#### Comment 5: Quality Codes (Caparo)

Caparo argues that the Department should accept and utilize the five additional quality codes proposed by Caparo. Caparo contends that it provided detailed narrative descriptions of each additional proposed quality code and explained what significantly differentiates each of those from the ones that are listed in the Department’s original questionnaire. According to Caparo, it provided information on the distinct chemical composition and mechanical/engineering qualities of Caparo’s specialty products that its customers find commercially significant, in that they demand that products meet these criteria.

Caparo alleges that the petitioners have argued that the Department should reject Caparo’s proposed quality designations on the grounds that they pertain only to Caparo’s own highly-specialized products. Caparo concedes that its products are distinct from the commodity cold-

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<sup>44</sup> See Letter from Caparo, “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Supplemental Sections A-C Questionnaire Response,” (December 10, 2015) at 5.

<sup>45</sup> *Id.*

<sup>46</sup> See Memorandum to file, “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Caparo Precision Strip, Ltd.,” (April 1, 2016) (Caparo HM Sales Verification Report) at 13.

<sup>47</sup> See Policy Bulletin 98.2 (February 23, 1998).

<sup>48</sup> See Letter from Caparo, “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Sections B through D Questionnaire Response,” (November 11, 2016) (public version) at Exhibit B-10.

rolled steel products that are the focus of this investigation, but maintains that the physical differences within the universe of these distinct products are material enough to warrant the additional quality codes. Citing *Viraj*, Caparo contends that, whenever possible, the Department must make an apples-to-apples comparison of merchandise to effectuate a fair comparison between the NV and United States price.<sup>49</sup>

Caparo also asserts that the differences in costs between the products with the different quality codes Caparo reported are both consistent and material. According to Caparo, given these differences, it is not correct to conclude that the differences identified by Caparo in its proposed quality codes are sufficiently captured by other reported characteristics. Citing *Garofalo*, Caparo contends that it is the Department's practice to consider "cost differences attributable to significant differences in physical characteristics" in determining whether to accept proposed respondent-specific code categories.<sup>50</sup>

AK Steel argues that Caparo's reported quality codes were appropriately reclassified by the Department. AK Steel contends that it is the Department's practice not to create additional categories unless the physical characteristics are significantly different from an existing known category. According to AK Steel, a respondent seeking to create additional categories must provide compelling information to support the necessity for differentiating additional types. AK Steel claims that Caparo has not met its significant burden in this investigation.

In addition, AK Steel observes that Caparo filed comments on the Department's proposed model match methodology prior to the Department issuing its questionnaire, but did not suggest adding the five specific quality codes it now seeks to use. AK Steel asserts that it was only later, after Caparo could determine which quality distinctions would result in the most favorable matches, that Caparo arrived at its current proposal. AK Steel concludes that such a results-oriented approach should not be allowed and the Department should continue to classify Caparo's sales using the methodology adopted in the *Preliminary Determination*.

Department's Position: Caparo reported five additional quality categories, claiming that most of the products it sold do not fall into the quality descriptions indicated in the questionnaire.<sup>51</sup> We asked Caparo to provide a detailed narrative description of each additional quality it proposed and explain what differentiates each of those from the ones which are listed in our original questionnaire.<sup>52</sup> Caparo only provided brief explanations of its products.<sup>53</sup> Based on these explanations, we determined for purposes of the *Preliminary Determination* that Caparo had not adequately supported its claim that we adopt its requested five additional quality categories.<sup>54</sup>

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<sup>49</sup> See *Viraj Forgings, Ltd v. United States*, 283 F.Supp.2d 1335, 1340 (CIT 2003) (*Viraj*).

<sup>50</sup> See *Garofalo v. United States*, 783 F.Supp.2d 1230, 1242, 1243-45 (CIT 2011) (*Garofalo*).

<sup>51</sup> See Letter from Caparo, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Sections B through D Questionnaire Response," (November 16, 2015) at B-14 to B-15.

<sup>52</sup> See Letter to Caparo, "Antidumping Duty Investigation: Certain Cold-Rolled Steel Flat Products from the United Kingdom," (January 13, 2016) at 1.

<sup>53</sup> See Letter from Caparo, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Supplemental Sections A-C Questionnaire Response," (February 5, 2016) at Exhibit S2-1.

<sup>54</sup> See Memorandum to file, "Less-Than-Fair-Value Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: Preliminary Determination Analysis Memorandum for Caparo Precision Strip, Ltd.,"

It is our practice not to create additional product matching categories unless the physical characteristics are significantly different from an existing known category.<sup>55</sup> Caparo has presented no new argument in support of its claims, except to assert that cost differences exist among the various new qualities. Moreover, Caparo did not attempt to rebut or respond to our finding that “the differences identified by Caparo are captured to a considerable extent by an existing physical characteristic which Caparo reported (*i.e.*, minimum carbon content), and to some extent by another existing physical characteristic which Caparo reported (*i.e.*, minimum specified yield strength).”<sup>56</sup> Nor did Caparo attempt to rebut or respond to our finding that, although “Caparo distinguished its additional quality categories from certain structural steels, the structural steels cited by Caparo are not the universe of structural steels.”<sup>57</sup>

With respect to cost differences, while we may consider cost differences attributable to significant differences in physical characteristics in determining whether to accept proposed respondent-specific code categories, cost differences alone are not dispositive as to whether to create additional categories. There may be other factors that explain differences in costs between different products besides differences in physical characteristics, such as differences in production quantities, differences in the timing of production, etc. In *Pasta from Italy*, the case underlying *Garofalo*, the respondent was able to demonstrate that the cost differences were attributable to a difference in protein content.<sup>58</sup> In this investigation, Caparo made no reference to cost differences between its proposed qualities until its case brief, nor did Caparo explain what it is about the different proposed qualities that necessarily creates the differences in cost (in *Pasta from Italy*, it was a “higher protein (gluten) content” that resulted in higher prices<sup>59</sup>). As a result, we determine that Caparo has not demonstrated that the cost differences it claims exist between the categories are solely or even mainly due to the differences in the proposed qualities.

For the above reasons, we have not modified our methodology with respect to Caparo’s proposed additional qualities. Should Caparo continue to believe that the Department should accept its proposed additional qualities, Caparo would have the opportunity to provide further argument and evidence in support of its position in subsequent segments, in the event this investigation results in the imposition of an order.

Comment 6: Date of Sale (Caparo)

Caparo argues that the Department should utilize the shipment date as the date of sale for the sales shipped directly from the factory in the United Kingdom to the customer. According to Caparo, all such sales were shipped prior to the invoice date. Caparo asserts that, while the Department typically uses the invoice date as the date of sale, if, for any specific sale, the date

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(February 29, 2016) (Caparo Prelim Analysis Memo) at 2.

<sup>55</sup> See *Stainless Steel Wire Rods from India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 1040, 1044 (January 8, 2003) (unchanged in final; 68 FR 26288, May 15, 2003).

<sup>56</sup> See Caparo Prelim Analysis Memo at 2.

<sup>57</sup> *Id.*

<sup>58</sup> See *Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review*, 75 FR 6352 (February 9, 2010) (*Pasta from Italy*) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>59</sup> *Id.*

selected is after the shipment date for that sale, it is the Department's practice to use the shipment date as the date of sale for the sale in question.

AK Steel argues that the invoice date should continue to be the date of sale for Caparo's U.S. sales. AK Steel asserts that, by regulation, invoice date is the presumptive sale date, unless it is demonstrated that some other date better reflects the date on which the material terms of sale are established. AK Steel acknowledges that Caparo is correct that, in some cases, date of sale can be based on an earlier shipment date, where there is evidence that the material terms are not subject to change after the shipment date, but asserts that this is not always the case. Citing *Corrosion-Resistant Steel from India*, AK Steel claims that a respondent's U.S. date of sale was based on invoice date (rather than an earlier shipment date), because "there could be changes to a sale after shipment from India but before the issuance of the invoice."<sup>60</sup>

AK Steel contends that, because the invoice date is the presumptive sale date, the Department may not use shipment date (or any other alternative) unless there is affirmative record evidence showing that the material terms were established on that other date. AK Steel avers that, absent such evidence, the Department may not simply rely on a practice of using shipment date when it precedes the invoice date. According to AK Steel, Caparo cites no evidence that the material terms become unalterable at the shipment date.

AK Steel further asserts that Caparo's reported universe of U.S. sales includes invoice dates during the POI. AK Steel contends that, if Caparo had wished to preserve an argument for using shipment date as the sale date, then it should also have reported all sales shipped during the POI (even if the invoice was dated after the POI), but Caparo failed to do so. According to AK Steel, if the Department were to use shipment date as the date of sale, the universe of sales would be incomplete because it would drop sales invoiced during the POI that were shipped prior to the POI, but it could not add sales shipped during the POI that were invoiced after the POI. For this reason as well, AK Steel concludes, the Department should continue to use invoice date as the sale date.

Department's Position: The Department's regulations at section 351.401(i) provide that: "In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."

In the *Preamble*, the Department raised some initial concerns with the use of shipment date over invoice date in establishing the date of sale.<sup>61</sup> However, despite those statements, the

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<sup>60</sup> See *Certain Corrosion-Resistant Steel Products From India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016) (*Corrosion-Resistant Steel from India*), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>61</sup> See *Preamble*, 62 FR at 27349 ("[T]he Department has not adopted this suggestion {to establish shipment date over invoice date as the uniform date of sale}. First, date of shipment is not among the possible dates of sale specified in note 8 of the AD Agreement. Second, based on the Department's experience, date of shipment rarely represents the date on which the material terms of sale are established. Third, unlike invoices, which can usually be tied to a company's books and records, firms rarely use shipment documents as the basis for preparation of financial

Department has adopted a practice of calculating the date of sale to be the shipment date in lieu of invoice date in instances where the shipment date precedes invoice date.<sup>62</sup> This practice – “which has been implicitly approved by the courts”<sup>63</sup> – is based on the reasonable assumption that when a party ships its product to a customer, the material terms of the sale have been established.<sup>64</sup> This practice is also based on the presumption that the material terms of sale do not change after shipment date.<sup>65</sup> The Department has further recognized price and quantity as material terms of sale.<sup>66</sup>

Here, Caparo argues that we should utilize shipment date over invoice date for its direct shipment U.S. sales, which make up a subset of its overall U.S. sales.<sup>67</sup> Caparo described its sales process for such sales as follows:

If the order is for direct shipment to the customer from the U.K., CPS Inc. USA would place a back to back order with CPSL at transfer price (*i.e.* after retaining certain margin). Based on the Order received from CPS Inc. USA, CPSL makes its production planning and upon production of the material ships it directly to the U.S. customer and raises invoices on CPS Inc. USA{.} Upon delivery of the material to the U.S. customer’s facility, CPS Inc. USA raises invoice on the customer.<sup>68</sup>

In addition, the record demonstrates that the only change after shipment date (and invoice date) for such sales is return of merchandise by the customers.<sup>69</sup> The Department does not consider

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reports. Thus, reliance on date of shipment would make verification more difficult.”)

<sup>62</sup> See, e.g., *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009) (*Staple Fiber from Korea*).

<sup>63</sup> *Mittal Steel Point Lisas Ltd. v. United States*, 31 CIT 638, 647 (2007) (*Mittal Steel*) (citing *AIMCOR v. United States*, 141 F.3d 1098, 1104-05 (Fed. Cir. 1998)), *aff’d*, 548 F.3d 1375 (Fed. Cir. 2008).

<sup>64</sup> See *id.* (“Commerce’s reasoning therefore seems to be that shipment to the customer does not occur before the material terms of sale have been determined, so that when invoicing is subsequent to shipment, the date of shipment is generally an appropriate date of sale, although depending on the facts of specific review, Commerce may find another date more appropriate.”)

<sup>65</sup> See *id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value; Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38768 (July 19, 1999)).

<sup>66</sup> See, e.g., *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying IDM at Comment 1 (discussing the firmly established principle that price is a material term of sale); *Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People’s Republic of China*, 67 FR 20090 (April 24, 2002) and accompanying Issues and Decision Memorandum at Comment 12 (“In instances where the invoice date is after the shipment date, it is the Department’s normal practice to use the date of shipment, as the material terms of sale, particularly quantity, are understood to be set when the merchandise is shipped.”).

<sup>67</sup> The rest of Caparo’s U.S. sales are warehouse sales, *i.e.*, sold directly from its warehouse located in the United States, for which the date of sale is the shipment date and the invoice date – which are the same date. See Letter from Caparo, “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Voluntary Response to Questionnaire Section A,” (October 13, 2015) at 14 and 21-22.

<sup>68</sup> See Letter from Caparo, “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Voluntary Response to Questionnaire Section A,” (October 13, 2015) at 21.

<sup>69</sup> See Letter from Caparo, “Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Sections B through D Questionnaire Response,” (November 16, 2015) at C-26.

such returns to be changes to the material terms of sale in determining the appropriate date of sale. Thus, the record establishes that the sales negotiations for Caparo's direct shipment sales take place prior to shipment date (which occurred prior to invoice date), and, further, there is no evidence that the material terms of sale (*i.e.*, price and quantity) changed after shipment date.

AK Steel argues, Caparo has stated that "there may be changes to the agreed price and/or quantity up to the time of invoicing{,}" and that "Caparo provided numerous examples of such changes occurring up until the invoice date for its U.S. sales." We recognize that Caparo has made similar statements that "invoice contains the final terms of sale,"<sup>70</sup> which we relied upon at the *Preliminary Determination*. In light of the record as a whole, however, as discussed above, we find that there is no evidence showing that there are any changes to the material terms of sale after shipment of the merchandise to the first unaffiliated customer and, therefore, we believe it is appropriate to rely upon the shipment date, in accordance with our normal practice. Moreover, the "examples" cited by AK Steel are in fact changes in sale related to the warehouse U.S. sales – not the direct shipment U.S. sales at issue here. Thus, AK Steel has pointed to no evidence to contradict our finding that there are no changes to the material terms of sale for Caparo's direct shipment U.S. sales.

We also disagree with AK Steel that our determination in *Corrosion-Resistant Steel from India* requires that we rely on invoice date over the shipment date. In that determination, we stated that "we used the invoice date as the date of sale because {the respondent} demonstrated that there could be changes to a sale after shipment from India but before the issuance of the invoice."<sup>71</sup> The publicly available information from that proceeding does not indicate which changes were at issue, nor whether we considered such changes to be material. Thus, we are relying upon the record of this proceeding on which there is no evidence showing any changes to the material terms of sale (*i.e.*, price or quantity) after shipment of the merchandise to the first unaffiliated customer. Because there is no record evidence, we find *Corrosion-Resistant Steel from India* is not applicable; rather, we are relying on our standard practice of using shipment date as the date of sale when it precedes invoice date.

For these reasons, we have used the date of shipment as the date of sale for any of Caparo's sales that were shipped directly from the United Kingdom where the date of shipment preceded the date of invoice, in light of the record and in accordance with our normal practice. We acknowledge AK Steel's concern that the universe of sales reported by Caparo does not include sales shipped during the POI but invoiced after the POI (if there were any such sales). In an antidumping duty investigation, however, we have the discretion to excuse a respondent from reporting a relatively small subset of sales.<sup>72</sup> In this case, the sales we exclude from our calculation by using a different date of sale is relatively small.<sup>73</sup> We determine it is appropriate

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<sup>70</sup> See Letter from Caparo, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Sections B through D Questionnaire Response," (November 16, 2015) at C-19.

<sup>71</sup> See *Corrosion-Resistant Steel from India*, 81 FR 35329 (June 2, 2016) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>72</sup> See *Certain Uncoated Paper From Portugal: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 51777 (August 26, 2015) and accompanying Preliminary Determination Memorandum at 10 (unchanged in final; 81 FR 3105, January 20, 2016).

<sup>73</sup> See Memorandum to file, "Less-Than-Fair-Value Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Determination Analysis Memorandum for Caparo Precision Strip, Ltd.," dated

to excuse Caparo from reporting any such sales in this case, especially in light of the fact that we did not ask Caparo to report such sales in any of our five supplemental questionnaires to Caparo.

Comment 7: Successor-in-Interest (Caparo)

Caparo argues that Liberty Performance Steels Ltd. (Liberty), a member of the Liberty House Group, is the successor-in-interest to Caparo and is entitled to the cash-deposit rate assigned by the Department to Caparo. According to Caparo, the evidence on the record demonstrates that the management, production facilities (other than one facility that was closed), supplier relationships, and customer base remained substantially unchanged. Moreover, the Department verified this evidence.

AK Steel argues that Liberty should not be found to be the successor-in-interest to Caparo. AK Steel asserts that the record is insufficient to support such a determination and that the Department should either refrain from making a decision on successorship until the first administrative review or find that Liberty is not the successor to Caparo.

According to AK Steel, the Department verified that there was some (although not complete) overlap between the entities with respect to their management, supplier relationships, and customer bases. The Department's verification, however, was conducted only four months after the relevant assets were sold to the Liberty House Group. AK Steel alleges that the former Caparo is in a transitional period and has not yet been fully integrated into the Liberty House Group. Caparo may still be in a process of winding down certain relationships in place from before the sale and transitioning out prior management. Once integration has been completed, one would expect to find far less overlap. It is more appropriate, therefore, to consider these factors in a first administrative review.

AK Steel further contends that the most important factor that can be evaluated right now weighs heavily against a finding of successorship. With respect to production facilities, AK Steel asserts that the Department found that only one of Caparo's two mills was transferred to Liberty. Moreover, AK Steel alleges that the Liberty House Group itself already had another steel factory with integrated steelmaking and hot-rolling capabilities. According to AK Steel, Caparo officials told the cost verification team that this factory is not operational and that, to Caparo's knowledge, the Liberty House Group did not have plans to commence steel-producing operations at the plant. However, AK Steel alleges, the Liberty House Group's website states that the rolling mill operations have commenced using sourced slabs and plans are on the anvil to eventually revamp the steel melting shop and grow the rated capacities of the mill. AK Steel avers that, as this happens, and as Caparo is integrated into the Liberty House Group, its production operations will be very different from the pre-sale period.

Department's Position: In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in the following: (1) management; (2) production facilities; (3) supplier relationships; (4) customer base.<sup>74</sup> While no

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concurrently with this memorandum at Section 2-F of the margin program log.

<sup>74</sup> See, e.g., *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941 (November 18, 2005), and *Notice of Final Results of*

single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.<sup>75</sup>

Thus, if the evidence demonstrates that, with respect to the production and sale of subject merchandise, the new company operates as the same business entity as the former company, we will accord the new company the same antidumping treatment as its predecessor.

On December 10, 2015, Caparo and its assets, with the exception of the Ductile Stourbridge Cold Mills facility, were sold to the Liberty House Group, a privately-held, United Kingdom-based conglomerate.<sup>76</sup> After the acquisition by the Liberty House Group, Caparo goes by the name Liberty Performance Steels.<sup>77</sup>

With regard to production facilities, Caparo had two production facilities: (1) JB & S Lees and Firth Cleveland Steel Strip; and (2) Ductile Stourbridge Cold Mills.<sup>78</sup> The Caparo assets that were purchased and became Liberty "include the plant, machinery and equipment, stock, intellectual property, customer lists, information technology (IT) and goodwill of the company and its JB & S Lees and Firth Cleveland Steel Strip facilities."<sup>79</sup> The Ductile Stourbridge Cold Mills facility was not included in the sale.<sup>80</sup> The Ductile Stourbridge Cold Mills facility was closed by Caparo, its employees terminated, and its assets liquidated prior to the sale of Caparo to the Liberty House Group.<sup>81</sup>

With respect to management, aside from the managers who worked at the Ductile Stourbridge Cold Mills facility (which was closed), only one manager who worked at Caparo was not with Liberty.<sup>82</sup> There were only two managers who are with Liberty who were not with Caparo, one of whom is not involved in the day-to-day operations of Liberty.<sup>83</sup> The only other change in management is that one manager was promoted from within Caparo.<sup>84</sup>

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*Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (January 2, 2002).

<sup>75</sup> See *Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999), and *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994).

<sup>76</sup> *Id.* See also memorandum from the Department, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Caparo Precision Strip, Ltd." (April 1, 2016) (Caparo HM Sales Report) at 3.

<sup>77</sup> See Letter from Caparo, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Supplemental Sections A-C Questionnaire Response," (February 25, 2016) at 1. See also Caparo HM Sales Report at 1, 2-3.

<sup>78</sup> See Letter from Caparo, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Voluntary Response to Questionnaire Section A," (October 13, 2015) (CQRA) at 5.

<sup>79</sup> See Letter from Caparo, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Supplemental Sections A-C Questionnaire Response," (February 25, 2016) (CSQR5) at 1.

<sup>80</sup> *Id.*

<sup>81</sup> See Letter from Caparo, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Supplemental Sections A-C Questionnaire Response," (February 5, 2016) at 1.

<sup>82</sup> See Caparo HM Sales Report at 3.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

With respect to supplier relationships, Caparo had no suppliers who did not supply Liberty.<sup>85</sup> Liberty had one supplier who did not supply Caparo during the POI but had supplied Caparo prior to 2015.<sup>86</sup>

With respect to customer base, there is significant overlap between Caparo's home-market customers and Liberty's home-market customers.<sup>87</sup> Caparo's top ten customers have all continued as customers of Liberty.<sup>88</sup> Similarly, there is substantial overlap between Caparo's U.S. customers and Liberty's U.S. customers.<sup>89</sup>

Based on these facts, and based on the totality of the circumstances, we determine that there is not a substantial difference in management, supplier relationships, and customer base between Caparo and Liberty. Moreover, in light of the fact that the JB&S Lees and Firth Cleveland Steel Strip plant remained unchanged, combined with the fact that the management, supplier relationships, and customer base are largely similar, we determine that the closure of the Ductile Stourbridge Cold Mills plant is not a substantial-enough difference to conclude that Liberty is a substantially different company from Caparo. Accordingly, we conclude that Liberty is the successor-in-interest to Caparo.

With respect to AK Steel's arguments, we acknowledge that the verification occurred only four months after the sale of Caparo to the Liberty House Group. That said, we have to analyze the facts before us as they are; we cannot speculate as to what they might be in the future. Also, with respect to the Liberty House Group's steel factory with integrated steelmaking and hot-rolling capabilities, AK Steel's arguments are purely speculative.

#### Comment 8: Restructuring and Impairment Costs

TSUK argues that for the final determination, the Department should exclude restructuring and impairment costs<sup>90</sup> from the headquarters (HQ) G&A expense rate calculation. TSUK acknowledges that the Department's general practice is to classify restructuring and impairment costs as G&A expenses because they relate to general operations of the company. However, TSUK contends, the Department has an important and longstanding exception to this general practice, which is to exclude closure costs if the respondent can provide evidence that the facility no longer exists or is permanently closed.<sup>91</sup>

TSUK asserts that it submitted evidence to demonstrate that the vast majority of the impairment costs that the Department included under the HQ G&A expenses were incurred for the shutdown

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<sup>85</sup> See CSQR5 at 4-5.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*, at Exhibit S4-3.

<sup>88</sup> *Id.*, at 6.

<sup>89</sup> *Id.*, at 6-7.

<sup>90</sup> Impairment costs relate to a permanent reduction in the value of a company's assets when there is a decline in the fair value of an asset below its carrying amount on the company's balance sheet.

<sup>91</sup> See *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774 (October 1, 2009) (*Chlorinated Isocyanurates from Spain*) and accompanying Issues and Decision Memorandum at Comment 1.

and sale of the Long Products business. According to TSUK, the Long Products facilities manufactured only non-subject merchandise and were geographically separate from those facilities manufacturing the merchandise under consideration. TSUK claims that it entered into negotiations with a third-party buyer to sell the Long Products business and, in anticipation of the sale, impaired its assets and transferred them to a newly created subsidiary. According to TSUK, the impairment of the Long Products business' assets was done in anticipation of the shutdown and sale of the entire Long Products business. TSUK explains that these impairment costs were not part of its normal business operations or its general operations and, as such, the Department should consider them extraordinary and exclude them from the HQ G&A expenses.

TSUK argues that its situation is similar to that in *Softwood Lumber from Canada*, where a respondent submitted evidence showing that it closed its mill after the review period and the Department held that the costs related to the idling of the mill, that were incurred during the review period, may not be included in the G&A expenses on the grounds that the Department “cannot ignore record evidence that significant facts changed subsequent to the period of investigation or review.”<sup>92</sup> TSUK claims that it has similarly submitted evidence showing that significant facts changed subsequent to the POI. Therefore, TSUK concludes, impairment costs incurred during the POI that are related to the closure and sale of the Long Products business after the POI must be excluded from the HQ G&A expenses.

TSUK adds that the Department has a longstanding practice of excluding restructuring and impairment costs of subsidiaries.<sup>93</sup> TSUK alleges that the fact that the Long Products business' assets were impaired before transferring them to Longs Steel UK, Ltd., a separate legal subsidiary, should not be relevant. TSUK argues that, in the alternative, the Department should exclude the impairment costs because they relate to assets that were transferred to a separate legal subsidiary during the POI. In addition, TSUK argues that, for purposes of the final determination, the Department should also exclude the impairment costs that it verified were related to separate legal entities.

AK Steel argues that the Department should continue to include the impairment costs for the Long Products business in the HQ G&A expenses. However, AK Steel agrees with TSUK that the Department should exclude the impairment costs related to separate legal entities from the HQ G&A expenses. According to AK Steel, the Department considers an expense to be extraordinary only if the event that gave rise to it is both unusual in nature and infrequent in occurrence, and that impairment losses are regularly recognized by companies in the normal course of business upon the recognition by management that the historical value of an asset is no longer recoverable through future use. AK Steel asserts that neither restructuring costs nor impairment losses can be considered unusual or infrequent, and the Department routinely includes these items in G&A expenses along with other commonly recognized period costs. Moreover, AK Steel notes that, in TSUK's profit and loss statement, the restructuring and

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<sup>92</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005) (*Softwood Lumber from Canada*) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>93</sup> See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005) (*Stainless Steel Bar from France*) and accompanying Issues and Decision Memorandum at Comment 1.

impairment costs are not classified as extraordinary expenses, but included in ordinary activities before finance charges.

AK Steel contends that TSUK's assertion that the Long Products business' impairment costs relate solely and directly to the shutdown and sale of the business is not supported by record evidence. According to AK Steel, the Long Products business was neither shut down nor sold, was in operation throughout the POI, and was still in operation at the time of the Department's verification in April 2016. AK Steel argues that the Long Products business' impairment costs resulted from the routine annual review of TSUK's fixed assets. AK Steel alleges that the Department verified that the impairment losses for the Long Products business unit were recognized because the present value of estimated future cash flows is less than the book value of the assets. According to AK Steel, regardless of its plans to sell the business, TSUK was required to recognize the Long Products business' impairment costs in accordance with generally accepted accounting principles (GAAP). Therefore, AK Steel contends that, unlike *Softwood Lumber from Canada*, the Long Products business' impairment cannot be considered to be a "closing cost" or a "loss on the sale of the business."

AK Steel further argues that the impaired assets were held in TSUK's Long Products division during the POI. According to AK Steel, the Department verified that the assets of the Long Products division were segregated and transferred to Longs Steel UK, Ltd. after the POI and after the close of TSUK's fiscal year for which G&A expenses were calculated.

With respect to TSUK's argument that it should not matter whether the assets were impaired before or after they were transferred to a separate entity, AK Steel contends that in *Stainless Steel Bar from France* the Department excluded impairments related to subsidiaries from the numerator of the G&A expense ratio because the COGS denominator did not include costs from those same subsidiaries. According to AK Steel, this policy is intended to avoid a mismatch. AK Steel avers that there is no such mismatch in the instant case because the costs of the Long Products business are included in the COGS denominator.

Department's Position: For the final determination, we have continued to include the total restructuring and impairment costs, recorded in TSUK's fiscal year ended March 31, 2015, (FY 2015) audited financial statements, in TSUK's HQ G&A expense ratio calculation. However, we reduced the total restructuring and impairment costs by the impairment costs related to separate legal entities.

We agree with TSUK that the Department's established practice with respect to impairment losses is to treat them as general expenses and to include the total amount recorded in the respondent's financial statements in the G&A expense ratio calculation.<sup>94</sup> Further, we agree with TSUK that the Department's practice is to exclude the closure costs if the respondent can provide evidence that the facility no longer exists or is permanently closed.<sup>95</sup> However, in the instant case, we have neither closure costs, nor do we have facilities that no longer existed or were permanently closed.

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<sup>94</sup> See *Chlorinated Isocyanurates from Spain* at Comment 1.

<sup>95</sup> *Id.*

TSUK's assertions (*i.e.*, that the impairment of the Long Products business' assets was done in anticipation of the shutdown and sale of the entire Long Products business; and, that these impairment costs were not part of its normal business operations or its general operations and should be considered extraordinary) are not supported by record evidence. As discussed in TSUK's cost verification report, according to company officials, the impairment losses are recognized when the present value of estimated future cash flows is less than the book value of the assets.<sup>96</sup> Further, as noted by AK Steel, according to TSUK's FY 2015 audited financial statements and in accordance with GAAP in the United Kingdom: "At each reporting period end, the Company reviews the carrying amounts of its tangible fixed assets and intangible assets (including goodwill) to determine whether there is any indication that the carrying amount of those assets may not be recoverable through continuing use. If any such indication exists, the recoverable amount of the asset is reviewed in order to determine the extent of the impairment loss (if any). An impairment loss is recognized as an expense immediately."<sup>97</sup> Furthermore, we agree with AK Steel that the Department considers an expense to be extraordinary only if the event that gave rise to it is both unusual in nature and infrequent in occurrence.<sup>98</sup> As such, neither restructuring costs nor impairment losses can be considered unusual or infrequent, and the Department, therefore, routinely includes these items in the G&A expense along with other commonly recognized period costs.<sup>99</sup> Finally, as discussed in TSUK's cost verification report: 1) the assets and division giving rise to the impairment losses were still in operation during the POI; 2) although Longs Steel UK, Ltd. was set up as a wholly-owned subsidiary on February 13, 2015, in anticipation of the sale of the company, the assets of the Long Products division were not segregated from those of TSUK during the fiscal year for which G&A expenses were calculated and were not transferred to this subsidiary until August 2, 2015, which is after the POI; and, 3) the Long Products business unit was still in operation during the POI and its financial results were part of TSUK's financial results and included in its FY 2015 audited financial statements.

TSUK's reliance on *Softwood Lumber from Canada* is misplaced for the following reasons. We agree with AK Steel that the Long Products business' impairment cannot be considered to be a "closing cost" or a "loss on the sale of the business." As discussed above, these impairment costs were a result of an assessment performed annually as prescribed by GAAP in the United Kingdom, in the normal course of business, where impairment losses are recognized when the present value of estimated future cash flows is less than the book value of the assets. Further, we disagree with TSUK's assertion that, because significant facts changed subsequent to the POI, the impairment costs incurred during the POI that are related to the closure and sale of the Long Products business after the POI must be excluded from the HQ G&A expenses. Unlike *Softwood Lumber from Canada* where the mill assets were idled (*i.e.*, temporarily not in operation), as discussed above, in the instant case the assets and division giving rise to the impairment losses were still in operation during the POI, and there is no record evidence that the assets were permanently shut down after the POI. Further, in *Softwood Lumber from Canada*, we

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<sup>96</sup> See Memorandum to the File, "Verification of the Cost Response of Tata Steel UK Ltd. in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom," dated May 31, 2016 ("TSUK Cost Verification Report") at 25.

<sup>97</sup> See TSUK's October 16, 2015 Section A Questionnaire Response at Exhibit A-14, page 13 of TSUK's FY 2015 audited financial statements.

<sup>98</sup> See *Chlorinated Isocyanurates from Spain* at Comment 1.

<sup>99</sup> *Id.*

distinguished impairment costs, as we have here, from costs related to the shutdown and sale of a facility.<sup>100</sup> Thus, we disagree with TSUK that the impairment losses are related to the closure and sale of the Long Products business unit.

We agree with TSUK that the Department's practice is to exclude impairment costs attributed to subsidiaries.<sup>101</sup> However, as discussed above, although the Longs Steel UK, Ltd. was set up as a wholly-owned subsidiary on February 13, 2015, in anticipation of the sale of the company, the assets of the Long Products division were not segregated from those of TSUK and transferred until August 2, 2015, after the POI. Therefore, for the final determination, the Department has continued to include the total restructuring and impairment costs, recorded in TSUK's FY 2015 audited financial statements, in TSUK's HQ G&A expense ratio calculation. However, we reduced the total restructuring and impairment costs by the impairment costs related to separate legal entities.

#### Comment 9: Raw Materials Costs (TSUK)

TSUK argues that, for the final determination, the Department should use TSUK's reported transfer prices it paid to an affiliate for purchases of ore, coal, and coke in the cost of manufacturing calculation. According to TSUK, for the *Preliminary Determination*, the Department compared TSUK's reported transfer prices to "facts-available" market prices and adjusted them, in accordance with the transactions disregarded rule. Citing *Chlorinated Isocyanurates from Japan*, TSUK asserts that the Department has found that the transactions disregarded rule does not apply when the affiliate involved is not acting as a supplier of an input.<sup>102</sup> According to TSUK, if the respondent company controlled all aspects of the input purchases, the Department considers these purchases to be transactions between the respondent and unaffiliated suppliers despite the presence of an affiliated party in the transactions. TSUK avers that, in this case, the Department verified that TSUK controlled all aspects of the input purchases for the transactions in question. Further, TSUK argues that the Department now has the necessary information on the record to use a market price based on actual market purchases for ore, coal, and coke.

In addition, TSUK argues that a certain business proprietary expense item should not be added to the reported transfer prices because this results in double counting. Further, TSUK argues that an amount for selling, general and administrative (SG&A) expense based on the affiliate's reported SG&A expense rate should not be added to the market price, because the affiliate's acquisition cost reflects the actual market price paid for these raw materials.

AK Steel argues that, for the final determination, the Department should continue to adjust the ore, coal, and coke costs, in accordance with the transactions disregarded rule. AK Steel contends that this case is distinguishable from *Chlorinated Isocyanurates from Japan* because

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<sup>100</sup> See *Softwood Lumber from Canada*, 70 FR 73437 (December 12, 2005) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>101</sup> See *Stainless Steel Bar from France* at Comment 1.

<sup>102</sup> See *Chlorinated Isocyanurates from Japan: Final Determination of Sales at Less Than Fair Value*, 79 FR 56059 (September 18, 2014) (*Chlorinated Isocyanurates from Japan*) and accompanying Issues and Decision Memorandum at Comment 4.

that case involved an affiliated buyer's agent and the actual transactions were directly between the respondent and its unaffiliated suppliers. In this case, the affiliate from which TSUK purchased these inputs is a reseller, not a buyer's agent. AK Steel also asserts that the Department applies the transactions disregarded rule to all purchases through affiliated resellers, even when the respondent negotiates its purchases with the unaffiliated supplier directly and the affiliate's services are limited to document handling and acting as a payment intermediary.<sup>103</sup>

AK Steel also claims that the verification report demonstrates that the Department's adjustments do not result in double counting as alleged by TSUK. AK Steel further contends that using TSUK's reported transfer price would not capture all the costs attributable to these transactions.

Department's Position: For the final determination, we have continued to analyze the affiliated purchases of ore, coal, and coke in accordance with the transactions disregarded rule, provided at section 773(f)(2) of the Act. Further, we have adjusted TSUK's reported ore, coal, and coke transfer prices to include a certain business proprietary expense item. In addition, we have calculated the market price for the transactions disregarded analysis using the affiliate's acquisition cost (*i.e.*, the purchase price paid to the unaffiliated suppliers) plus an amount for SG&A expense based on the affiliate's reported SG&A expense rate. As much of the information relating to this issue is business proprietary in nature, please refer to the TSUK Final Cost Memorandum for further discussion.<sup>104</sup>

TSUK's reliance in *Chlorinated Isocyanurates from Japan* is misplaced. Under section 773(f)(2) of the Act, the Department's established practice is to value the input at the higher of the transfer price or the market price for the input when a respondent purchases inputs from an affiliated supplier.<sup>105</sup> We agree with AK Steel that, unlike *Chlorinated Isocyanurates from Japan*, where the affiliated party was a commissioned sales agent, in the instant case, the affiliated party is a reseller which also provided procurement services to TSUK.<sup>106</sup> Further, for all affiliated purchases, the payment is made through the affiliated reseller and TSUK incurs a certain business proprietary expense.<sup>107</sup> In any event, as noted by AK Steel, we have applied the transactions disregarded rule in instances where the affiliated reseller's services were limited to document handling and acting as payment intermediary.<sup>108</sup>

We also disagree with TSUK that a certain business proprietary expense item should not be added to the reported transfer prices because this results in double counting. TSUK's transfer prices, as reported, do not capture the full amount paid to the affiliate. The proprietary additional expense is not already captured by TSUK and its inclusion in the reported transfer prices paid to its affiliate for inputs does not result in the double counting of costs. As much of the information

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<sup>103</sup> See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico, 77 FR 17422 (March 26, 2012) (*Bottom Mount Combination Refrigerator-Freezers from Mexico*) and accompanying Issues and Decision Memorandum at Comment 28.

<sup>104</sup> See TSUK Final Cost Memorandum at 1-2.

<sup>105</sup> See *Chlorinated Isocyanurates from Japan* at Comment 4.

<sup>106</sup> See TSUK Cost Verification Report at 21.

<sup>107</sup> See TSUK Cost Verification Report at 21.

<sup>108</sup> See *Bottom Mount Combination Refrigerator-Freezers from Mexico* at Comment 28.

relating to this expense item is business proprietary in nature, please refer to the TSUK Final Cost Memorandum for further discussion.<sup>109</sup>

Finally, we disagree with TSUK that an amount for SG&A expense should not be added to the market price because the affiliate's acquisition cost reflects the actual market price paid for these raw materials. The Department's established practice when the respondent purchases inputs from an affiliated reseller is to value the input at the higher of the transfer price or the adjusted market price for the input (*i.e.*, the affiliate's average acquisition cost from the unaffiliated supplier plus the affiliate's selling, general, and administrative costs).<sup>110</sup> Because the affiliated reseller is providing a service related to the acquisition of the input, as well as the input itself, the SG&A expenses of the affiliate must be included.<sup>111</sup> The Department must ensure that the market price it uses for comparison incorporates the activities related to both the service and the input.<sup>112</sup>

#### Comment 10: Energy Costs (TSUK)

TSUK argues that, for the final determination, the Department should use TSUK's reported transfer prices paid to Tata Steel Europe (TSE) for electricity and natural gas in the cost of manufacturing calculation. According to TSUK, for the *Preliminary Determination*, the Department compared TSUK's reported transfer prices to "facts-available" market prices, in accordance with the transactions disregarded rule. Further, TSUK argues that the Department now has the necessary information on the record to use a market price based on actual market purchases for electricity and natural gas.

In addition, TSUK argues that certain business proprietary expense items should not be added to the reported transfer prices because this results in double counting. Further, TSUK argues that adding an amount for TSE's SG&A expense to the market prices would also result in double counting because a portion of TSE's SG&A is allocated to TSUK in the normal course of business.

AK Steel argues that TSUK's electricity costs should be based on partial AFA. According to AK Steel, after the *Preliminary Determination*, the Department issued an additional questionnaire to TSUK allowing the company another opportunity to provide the necessary information regarding market price, but TSUK elected not to provide the requested information. AK Steel contends that, in response to the Department's supplemental questionnaire, TSUK acknowledged that it purchases electricity from an unaffiliated supplier but declined to report the purchase price, because the quantities purchased were small and the rates paid were, according to TSUK, similar to residential usage rates and, as such, not comparable to its purchases from TSE. AK Steel claims that TSUK's detailed written agreement with the unaffiliated supplier is hardly akin to a residential supply arrangement and undermines TSUK's assertions.

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<sup>109</sup> See TSUK Final Cost Memorandum at 1-2.

<sup>110</sup> See *Bottom Mount Combination Refrigerator-Freezers from Mexico* at Comment 28.

<sup>111</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 34122 (June 18, 2004) (*Polyethylene Retail Carrier Bags from Thailand*) and accompanying Issues and Decision Memorandum at Comment 6.

<sup>112</sup> *Id.*

AK Steel argues that the fact that TSUK's purchases from the unaffiliated supplier were smaller is not an excuse to disregard the Department's request for the unaffiliated suppliers' pricing information. According to AK Steel, TSUK's cites to various non-market economy cases, where the Department selected a surrogate value for electricity based on the category of user, fails to support TSUK's decision to withhold the requested information. According to AK Steel, rather than report the information requested by the Department, TSUK provided information regarding electricity it resold to companies that provide on-site services to TSUK. AK Steel claims that this information does not demonstrate that the transfer price paid by TSUK to the affiliate reflects a market price. In any event, AK Steel avers, TSUK failed to comply with the Department's request to report the purchase prices paid to unaffiliated suppliers. AK Steel contends that, because TSUK withheld information requested by the Department, the information needed to apply the transactions disregarded rule is not on the record.

AK Steel argues that, because TSUK has failed to cooperate by not acting to the best of its ability to provide information requested by the Department, the Department should use an adverse inference in assigning the facts available with respect to electricity. AK Steel proposes that, for the final determination, in addition to the electricity cost increases made in the *Preliminary Determination*, the Department should make additional increases to the electricity component of the total TOTCOM.

In response to AK Steel's arguments, TSUK contends that it has fully complied with the Department's requests for information. Moreover, TSUK asserts that full market price information is on the record and was thoroughly verified by the Department. TSUK also claims that the use of any of the unaffiliated supplier's rates would be contrary to the verified facts of this investigation and the overwhelmingly detailed market price information on the record.

In response to TSUK's arguments, AK Steel argues that for the final determination the Department should continue to adjust the electricity and natural gas costs, in accordance with the transactions disregarded rule. AK Steel further contends that using TSUK's reported transfer prices would not capture all the costs attributable to these transactions.

Department's Position: For the final determination, we have continued to analyze the affiliated purchases of electricity and natural gas, in accordance with the transactions disregarded rule, section 773(f)(2) of the Act. Further, we have adjusted TSUK's reported electricity and natural gas transfer prices to include certain business proprietary expense items. In addition, we have calculated the market price of natural gas for the transactions disregarded analysis using TSE's acquisition cost (*i.e.*, the purchase price paid to the unaffiliated suppliers) plus an amount for SG&A expense based on TSUK's SG&A expense rate. Finally, we have determined that the use of partial facts otherwise available with an adverse inference is appropriate for the final determination with respect to electricity because of TSUK's repeated failure to provide requested information that is necessary to this investigation. As some of the information relating to this issue is business proprietary in nature, please refer to the TSUK Final Cost Memorandum for further discussion.<sup>113</sup>

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<sup>113</sup> See TSUK Final Cost Memorandum at 2-4.

For both the natural gas and electricity transfer prices, we disagree with TSUK that certain business proprietary expense items should not be added to the reported transfer prices because this results in double counting. TSUK's transfer prices, as reported, do not capture the full amount paid to the affiliate. The proprietary additional expenses are not already captured by TSUK and their inclusion in the reported transfer prices paid to its affiliate for electricity and natural gas purchases do not result in double counting of costs. As much of the information relating to these expense items is business proprietary in nature, please refer to the TSUK Final Cost Memorandum for further discussion.<sup>114</sup>

We also disagree with TSUK that adding an amount for TSE's SG&A expense in determining the market prices for natural gas would result in double counting because a portion of TSE's SG&A expense is allocated to TSUK in the normal course of business. The Department's established practice when the respondent purchases inputs from an affiliated reseller is to value the input at the higher of the transfer price or the adjusted market price for the input (*i.e.*, the affiliate's average acquisition cost from the unaffiliated supplier plus the affiliate's SG&A costs).<sup>115</sup> Because the affiliated reseller is providing a service related to the acquisition of the input as well as the input itself, the SG&A expenses of the affiliate must be included.<sup>116</sup> The Department must ensure that the market price it uses for comparison incorporates the activities related to both the service and the input.<sup>117</sup> TSUK's allocated amount of TSE's SG&A expenses accounts only for a portion of TSE's total SG&A expenses. The additional portion of TSE's total SG&A expenses is allocated to the other business units it benefits. Therefore, by allocating TSE's remaining SG&A expenses to the market price for natural gas purchases from TSE, there is no double counting as the amounts allocated down to TSUK in the normal course of business is not a part of the SG&A costs included in the market price computation. However, because we are not able to isolate TSE's SG&A expenses, we have used TSUK's SG&A expense rate as a facts available gap filler in order to calculate a market price for the affiliated purchases of natural gas.

In performing the transactions disregarded analysis for the affiliated purchases of natural gas, we compared TSUK's adjusted transfer price (*i.e.*, TSUK's reported transfer price plus certain business proprietary expense items) to the calculated market price (*i.e.*, TSE's acquisition cost price plus an amount for SG&A expense based on TSUK's selling and G&A expense rates), and used the calculated market price which exceeded TSUK's adjusted transfer price.<sup>118</sup>

For the affiliated electricity purchases, we disagree with TSUK that it has fully complied with the Department's request for information and that full market price information is on the record. Under section 773(f)(2) of the Act, the "transactions disregarded" rule, the Department's established practice is to value the input at the higher of the transfer price or the market price for the input when a respondent purchases inputs from an affiliated supplier.<sup>119</sup> In its response to the section D, TSUK explained that TSE purchases electricity from unaffiliated suppliers and resells

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<sup>114</sup> *Id.*

<sup>115</sup> See *Bottom Mount Combination Refrigerator-Freezers from Mexico* at Comment 28.

<sup>116</sup> See *Polyethylene Retail Carrier Bags from Thailand* at Comment 6.

<sup>117</sup> *Id.*

<sup>118</sup> See TSUK Final Cost Memorandum at 2-4.

<sup>119</sup> See *Chlorinated Isocyanurates from Japan* at Comment 4.

it to TSUK.<sup>120</sup> In the first supplemental section D questionnaire, we requested TSUK to provide a market price for its affiliated purchases (*i.e.*, its purchases from unaffiliated suppliers or, in the absence of unaffiliated purchases, the affiliate's COP (in the case of electricity purchases, TSE's acquisition cost plus an amount for SG&A expense)). In its response to our request, TSUK provided the prices it paid TSE for purchases of electricity.<sup>121</sup> TSUK did not, however, provide a market price for these purchases and explained that its prices were at arm's length in compliance with U.K. tax law and the inputs were minor.<sup>122</sup> In the second supplemental section D questionnaire, we again requested TSUK to provide a market price for the electricity purchases, but did not receive a response in time for the *Preliminary Determination*. Thus, for the *Preliminary Determination*, we used information on the record as facts available to calculate a market price for use in the transactions disregarded analysis. In its second supplemental section D response, which we received subsequent to the *Preliminary Determination*, in reference to unaffiliated purchases of electricity, TSUK explained that it purchased small quantities of electricity for some of its sites from an unaffiliated supplier.<sup>123</sup> TSUK did not, however, provide any information related to these purchases (*i.e.*, quantity and value) and explained that the rates TSUK paid to the unaffiliated supplier were not comparable to the rates TSUK paid to TSE because these rates were similar to residential usage rates.<sup>124</sup> Instead, TSUK stated that it sold some of the electricity purchased from TSE to unaffiliated parties that provide on-site services to TSUK.<sup>125</sup> TSUK explained it invoices these companies for the energy that they consume.<sup>126</sup> As discussed in TSUK's cost verification report, instead of sales to unaffiliated parties, these transactions appear to be reimbursements from the unaffiliated parties for electricity consumed in providing on-site services to TSUK.<sup>127</sup>

Section 776(a)(2) of the Act provides that, "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Further, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.

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<sup>120</sup> See TSUK's section D questionnaire response dated November, 5 2015 (section D) at 11.

<sup>121</sup> See TSUK's supplemental section D questionnaire response dated January 27, 2016 (first supplemental section D) at 43-45.

<sup>122</sup> *Id.* at 46-47.

<sup>123</sup> See TSUK's second supplemental section D questionnaire response dated March 11, 2016 (second supplemental section D) at 15.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 16.

<sup>126</sup> *Id.*

<sup>127</sup> See TSUK Cost Verification Report at 22.

Accordingly, we agree with AK Steel that by not providing the requested market price for its affiliated purchases of electricity, despite numerous attempts by the Department to gather this information, TSUK withheld information requested of it and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(A) and (C) of the Act. Without the requested information, we are unable to properly analyze whether TSUK's affiliated purchases of electricity represent arm's-length transactions, as required by the statute. Accordingly, we also find that necessary information is missing from the record, within the meaning of section 776(a)(1) of the Act. Therefore, because TSUK failed to cooperate by not acting to the best of its ability to provide information we requested, we have determined that application of partial adverse facts available, within the meaning of section 776(b) of the Act, is appropriate with respect to TSUK's purchases of electricity. As partial AFA, we calculated a higher market price than that at the *Preliminary Determination* for the affiliated purchases of electricity based on pricing information obtained from the electricity supply contract between TSUK and the unaffiliated supplier of electricity.<sup>128</sup>

#### Comment 11: Verification Corrections (TSUK)

AK Steel argues that TSUK's billing adjustments for two EP sales should be revised downward because the Department discovered that TSUK overstated the billing adjustments allocated to these sales.

TSUK did not comment on this issue.

Department's Position: We agree with AK Steel. We found at verification that TSUK overstated the billing adjustments it reported for two EP sales.<sup>129</sup> We have revised the billing adjustments for these two EP sales to match the amount we verified.

#### Comment 12: Verification Corrections (Caparo)

AK Steel argues that Caparo's costs should be adjusted to reflect certain verification corrections. AK Steel contends that Caparo submitted verification corrections at verification stating that the total cost of manufacturing should be increased. AK Steel asserts that the documentation submitted by Caparo also shows that the variable cost of manufacturing must be increased. AK Steel avers that the Department should increase both the total cost of manufacturing and the variable cost of manufacturing accordingly.

Caparo concurs that it presented certain minor corrections at the outset of the cost verification.

Department's Position: We agree with AK Steel that we should incorporate the verification corrections Caparo submitted at verification with respect to both variable and total costs of manufacturing and have done so for this final determination.

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<sup>128</sup> See TSUK's second supplemental section D at Exhibit 2SD-15.

<sup>129</sup> See Memorandum to File, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Tata Steel UK Ltd." (April 4, 2016) at 14.

**VII. RECOMMENDATION**

We recommend applying the above methodology for this final determination.

✓  
Agree

\_\_\_\_\_  
Disagree

*Paul Piquado*  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

*20 July 2016*  
(Date)